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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Truth-in-Billing	)	CC Docket No. 98-170
And	)	
Billing Format	)	

COMMENTS OF THE PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION

The Personal Communications Industry Association ("PCIA")[1] hereby respectfully submits its comments regarding the *First Report and Order and Further Notice of Proposed Rulemaking* in the above-captioned docket.[2] In its initial comments in this proceeding, PCIA argued that the Commission should refrain from adopting onerous regulations that describe in detail the permissible content and format of the customer bills prepared by CMRS providers.[3] PCIA cautioned the Commission not to limit the ability of carriers to craft their own truthful and non-misleading descriptions of

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[1] PCIA is an international trade association established to represent the interests of both the commercial and private mobile radio service communications industries and fixed broadband wireless industry. PCIA's Federation of Councils includes: the Paging and Messaging Alliance, the Broadband PCS Alliance, the Site Owners and Managers Association, the Association of Wireless Communications Engineers and Technicians, the Private Systems Users Alliance, the Mobile Wireless Communications Alliance, and the Wireless Broadband Alliance. As the FCC-appointed frequency coordinator for the 450-512 MHz bands in the Business Radio Service, the 800 MHz and 900 MHz Business Pools, the 800 MHz General Category frequencies for Business Eligibles and conventional SMR systems, and the 929 MHz paging frequencies, PCIA represents and serves the interests of tens of thousands of FCC licensees.

[2] *Truth-in-Billing and Billing Format* (First Report and Order and Further Notice of Proposed Rulemaking), CC Docket No. 98-170 (rel. May 11, 1999) ("*Report and Order*" and "*Further Notice*").

[3] PCIA Comments at 1 (Nov. 13, 1998).

charges relating to federal regulatory action.[4] PCIA contended that rather than forcing CMRS operators to follow one-size-fits-all billing requirements, the Commission should allow wireless carriers, already operating in a competitive marketplace, to respond to any customer concerns or questions about their bills in the matter the carrier deems most appropriate.[5] In addition, to the extent any Commission action can be justified by the facts, PCIA noted that the Commission should at most develop voluntary, flexible guidelines that protect consumers while allowing carriers to execute their business plans with minimal regulatory interference.[6] As set forth below, PCIA continues to oppose the adoption of *any* principles or rules, other than voluntary guidelines, governing the billing relationship between CMRS carriers and their customers, encourages the Commission to forbear from applying any truth-in-billing rules to the wireless industry, and continues to believe that the FCC does not have the statutory authority to mandate a specific format for wireless bills.

I. INTRODUCTION

In its *Report and Order*, the Commission concluded that only three rules should apply to all telecommunications carriers: (1) that the name of the service provider associated with each charge be clearly identified on the bill; (2) that each bill should

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[4] PCIA Reply Comments at 1-2 (Dec. 16, 1998). Consistent with the Commission's segmentation of comments concerning standardized labels for charges relating to federal regulatory action, PCIA will reserve comment on this particular matter except to say that carriers have an absolute First Amendment right to describe items on consumers' bills in words of their own choosing and cannot be forced to use standardized labeling descriptions.

[5] PCIA Comments at 1-2. In those very few cases where customers feel the carrier has not been responsive, the FCC's complaint process remains one avenue of redress.

[6] PCIA Comments at 2.

prominently include a toll-free telephone number for consumers to inquire or dispute any charge contained on the bill; and (3) that all carriers label customer charges for federal assessments (*i.e.*, universal service, subscriber line charge, local number portability) in conformance with FCC guidelines, if and when such requirements are adopted by the Commission.[7] However, because the record does not reflect the same high volume of customer complaints in the CMRS context, nor does the record in any way indicate that CMRS billing practices fail to provide consumers with the clear and non-misleading information they need to make informed choices, the Commission justifiably concluded that wireline and wireless carriers would be governed by two different sets of truth-in-billing rules.[8] In the *Further Notice*, the Commission seeks comment on whether the remaining truth-in-billing rules adopted in the wireline context should apply to CMRS carriers in order to protect consumers.[9]

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[7] *Report and Order*, ¶¶17-18.

[8] In addition to complying with the aforementioned rules, wireline carriers must also adhere to the following requirements: (1) where charges for two or more carriers appear on the same telephone bill, the charges must be separated by service provider, and the billing entity must provide clear and conspicuous notification of any change in service provider; (2) charges contained on telephone bills must be accompanied by a brief, clear, non-misleading, plain language description of the service or services rendered; and (3) where a bill contains charges for basic local service, in addition to other charges, the bill must distinguish between charges for which non-payment will result in disconnection of basic, local service, and charges for which non-payment will not result in such disconnection. *See* 47 C.F.R. § 64.2001.

[9] *Further Notice*, ¶68.

II. APPLYING THE WIRELINE TRUTH-IN-BILLING REQUIREMENTS TO WIRELESS CARRIERS IS UNNECESSARY TO PROTECT CONSUMERS

The Commission is correct in drawing a distinction between wireless and wireline carriers with respect to the truth-in-billing rules. The record in this proceeding clearly demonstrates that the overwhelming majority of customer complaints expressing confusion about their bills are directed towards the wireline industry. According to Commissioner Powell, "[a]lthough [slamming, cramming and consumer confusion] complaints from wireline customers number in the tens of thousands annually, complaints from wireless customers number only in the dozens..."[10] Moreover, during the April 15, 1999, FCC Open Meeting in which the Truth-in-Billing *First Report and Order and Further Notice of Proposed Rulemaking* was adopted, it was noted that approximately 60 complaints received by the Commission targeted the wireless industry. A mere sixty complaints for an industry consisting of over 100 million subscribers and 135 million subscriptions (PCS, cellular, paging, and SMR) is a clear indication that these rules are completely unwarranted for the wireless industry.[11]

Historically, wireline carriers have operated as regulated monopolies, while wireless carriers have operated in competitive markets. It is the existence of this competitive market that protects consumers from false, unclear, and misleading billing practices. Wireless providers have been forced by their competitors to be responsive to the needs of customers for clear bills. Unclear or misleading bills will result in a loss of

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[10] *Report and Order* and *Further Notice*, Separate Statement of Commissioner Michael K. Powell, Concurring at 74 ("Powell Statement").

[11] PCIA/Yankee Group Wireless Subscription Tracker located on PCIA's website at www.pcia.com.

customers, a loss in revenues, and the need to hire additional customer service personnel. None of these outcomes is desirable for any wireless carrier.

As noted by the Commission, some wireless customers are substituting wireless for wireline service.[12] These "all wireless" consumers are some of the industry's most important customers and represent the future of the telecommunications marketplace – a predominantly wireless environment. "All wireless" customers are protected by the existence of an extremely competitive wireless market and will continue to be protected. Wireless providers cannot afford to lose customers and, as noted earlier, must be responsive to the wishes and demands of all of their customers. Wireless carriers are constantly marketing to win away one another's customers.

Requiring wireless carriers to identify new service providers and "deniable" charges on the end-user's bill does not make much sense and is unnecessary to protect the wireless consumer. The purpose of a rule requiring carriers to identify new service providers is to protect customers from slamming and cramming. Although the wireless industry has a high rate of churn, the wireless industry has been able to avoid the slamming and cramming problems that have plagued the wireline industry.[13] There are a few reasons for that. First, as discussed in the *Further Notice*, wireless carriers are not subject to the Commission's equal access requirements.[14] Therefore, it is extremely difficult to slam the wireless customer by changing his or her presubscribed

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12 *Further Notice*, ¶69.

13 According to Kevin Condon, an analyst with Warburg Dillon Read, PCS monthly churn rates for 1998 were nearly 5%, nearly twice the 2.5% monthly rate experienced in the cellular industry. *See* Lynette Luna, *Financing and Churn Steer PCS Development*, RCR RADIO COMMUNICATIONS REPORT, Mar. 1, 1999.

14 *Further Notice*, ¶70.

interexchange carrier without the customer's consent. Second, wireless carriers also operate using different technologies (GSM, TDMA, CDMA, iDEN, analog) making slamming incidents very unlikely. Third, as noted in the *Further Notice* and in PCIA's earlier truth-in-billing comments, wireless carrier rarely bill for the services of third parties.[15] This substantially reduces the possibility of "cramming" unwanted third-party services onto a customer's bill without that customer's knowledge or consent. Given the unlikelihood of cramming and slamming occurring in the wireless context, the Commission should not require wireless providers to identify new service providers on their customer bills.

Requiring wireless carriers to identify "deniable" charges is also unnecessary. As correctly noted by the Commission, because CMRS providers generally bill for their own services, non-payment of a wireless bill cannot result in the termination of a customer's basic local wireline phone service.[16] Thus, there is no need for a wireless carrier to distinguish between "deniable" and "nondeniable" charges. In fact, any reference to termination of basic local service has the potential to confuse a wireless customer. Therefore, the Commission should adhere to its decision not to require wireless providers to distinguish between "deniable" and "nondeniable" charges.

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[15] *Further Notice*, ¶70; PCIA Comments at 7.

[16] *Further Notice*, ¶70.

III. THE FCC SHOULD FORBEAR FROM APPLYING THE WIRELINE RULES TO WIRELESS CARRIERS

Like the Commission, PCIA believes that all telecommunications consumers "expect and should receive bills that are fair, clear, and truthful."[17] The Commission notes in its *Further Notice* that it may not be necessary to apply the remaining truth-in-billing rules in the CMRS context and encourages commenters to address the applicability of a Section 10 forbearance analysis.[18] Given the exemplary record of the wireless industry with regard to customer complaints stemming from confusion regarding their wireless bills, the fact that wireless consumers seem to be genuinely satisfied with the format and description of charges that appears on their bills, and the fact that these regulations will cost industry and, ultimately, consumers millions of dollars, PCIA believes that the Commission should forbear from applying any of the truth-in-billing rules to the wireless industry.

Pursuant to Section 10, forbearance from enforcing a Commission regulation or regulations is appropriate when: (1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory; (2) enforcement of such regulation or provision is not necessary for the protection of consumers; and (3) forbearance from applying such provision or regulation is consistent with the public interest.[19]

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17 *Further Notice*, ¶68.

18 *Further Notice*, ¶68.

19 47 U.S.C. § 10(a).

Application and enforcement of any of the truth-in-billing rules is not necessary to ensure that the charges, practices, classifications, or regulations by, for or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory. The truth-in-billing rules have little relevance to the charges incurred by the wireless consumer. If anything, the truth-in-billing rules will only increase the monthly wireless bills of the American consumer because of the tremendous costs that will have to be spent by carriers in order to comply with the rules. Moreover, history proves that the wireless carriers can provide fair, clear, and truthful bills without such regulations. In fact, additional truth-in-billing requirements could result in billing content and formats that are more confusing to the wireless customer.

The truth-in-billing regulations are also not necessary for the protection of consumers. The Commission's own statistics show that of the 60,000 consumers that contacted the Commission expressing confusion, anxiety, or concern about their telephone bills, only 60 were targeted towards the billing practices of the wireless industry. It is the existence of the competitive marketplace that will continue to protect consumers from misleading and unclear billing practices – not application of the truth-in-billing rules.

Finally, forbearance from these rules is in the public's best interest. Establishing a new layer of regulations for the wireless industry would add significantly to the billing costs faced by carriers and would, ultimately, be absorbed by the wireless consumer. Some of the proposed formatting requirements, such as providing special "status change" and "summary" pages, would require CMRS carriers to incur significant costs. Such

costs would include redesigning the current billing software in order to generate the new format; the added paper, printing, and postage costs of the new bill pages; and answering questions about the new billing system. As PCIA pointed out in its reply comments, GTE noted that the cost of tacking an additional page onto its monthly wireless bills would add $9.6 million in annual mailing costs alone.[20] BellSouth indicated that the addition of one extra page to its wireless bills would require the expenditure of $500,000 to $1 million in programming costs, and projected that the additional page requirement, by itself, would translate into an extra $0.07 per customer, per month.[21] In fact, while all wireless carriers would be forced to modify their billing practices substantially if the FCC ultimately applies any additional truth-in-billing rules, small and rural carriers may be forced to completely replace their entire billing systems (equipment, software, etc.) in order to comply with the proposed federal format and content mandates. The high costs to wireless consumers and service providers associated with such endeavors simply are not worth the scant *potential* benefit that may be passed along to customers.

Applying the truth-in-billing rules to the wireless industry would be another example of unwarranted regulation in an allegedly deregulatory environment. Forbearance is important to ensure the continued vitality of the wireless industry. Granting the wireless industry forbearance from these rules will help ensure that: (1) wireless carriers are able to spend the bulk of their money where its needed – building out their networks; (2) the costs incurred by the wireless consumer continues to decrease; and

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[20] PCIA Reply Comments at 8-9; GTE Comments at 11 (Nov. 13, 1998).

[21] BellSouth Comments at 15 (Nov. 13, 1998).

(3) the vibrant competition that Congress envisioned among providers of telecommunications services continues.

IV. THE FCC DOES NOT HAVE THE STATUTORY AUTHORITY TO MANDATE A SPECIFIC FORMAT FOR WIRELESS BILLS AND SHOULD LIMIT ITS ROLE TO THE ISSUANCE OF GUIDELINES

The FCC's enabling statute – Section 1 of the Communications Act – states that the purpose of the Commission is to make available to all Americans "a rapid, efficient, Nation-wide and world-wide wire and radio communication service with adequate facilities at reasonable charges..."[22] Section 1's grant of jurisdiction thus focuses on the FCC's Congressionally-sanctioned role to ensure that American citizens have access to an efficient, reasonably-priced telecommunications network.

Like Commissioner Furchtgott-Roth, PCIA has serious reservations about the extent of the Commission's authority over the commercial relationship between carriers and their customers.[23] The Commission asserts that Section 201(b) and Section 258 of the Act give it the authority to enact the truth-in-billing guidelines. Section 201(b) states, "[a]ll charges, practices, classifications, and regulations for and in connection with such communication service, shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is hereby declared to be unlawful."[24] The Commission's narrow authority to ban unreasonable charges and practices pursuant to Section 201 does not, however, grant it the authority to intrude into

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[22] 47 U.S.C. § 151.

[23] *Report and Order* and *Further Notice*, Dissenting Statement of Commissioner Harold Furchtgott-Roth at 78 ("Furchtgott-Roth Statement").

[24] 47 U.S.C. § 201(b).

the commercial relationship between a carrier and its customer by issuing rules governing the content and format of telephone bills. Indeed, the Commission's rules go far beyond merely prohibiting charges and practices that are "unjust or unreasonable" by seeking to distinguish between shades of just and reasonable practices.

Section 258 states "[n]o telecommunications carrier shall submit or execute a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service except in accordance with such verification procedures as the Commission shall prescribe."[25] As noted earlier, since wireless carriers are not subject to the Commission's equal access requirements, it is extremely difficult to slam a wireless customer by changing his or her presubscribed interexchange carrier without the customer's consent. In other words, Section 258 is inapplicable to the wireless industry.

By attempting to issue detailed requirements regarding the form and content of telephone bills, the Commission is exceeding its jurisdiction under Sections 1, 201, and 258 of the Communications Act. In order to avoid such jurisdictional overreaching, the Commission should limit its action in this docket to the issuance of flexible guidelines that will lead to truth and clarity in billing.

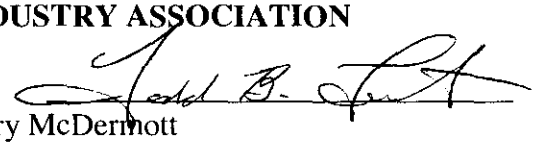
V. CONCLUSION

PCIA supports the Commission's goal of ensuring clear, concise consumer bills and welcomes the opportunity to participate in this discussion of how best to achieve this objective. The adoption of a rigid set of rules that prescribe the permissible format and content of consumer bills for all carriers is not, however, the best way to achieve this outcome. The wireless industry simply has not experienced billing problems that merit

regulatory intervention. As a result, the FCC should forbear from applying the truth-in-billing rules to the wireless industry. Given the wireless industry's admirable record in this area, as well as the fiercely competitive nature of the wireless industry that protects consumers from false and unclear billing practices, PCIA encourages the Commission to adopt voluntary guidelines that wireless carriers can choose to adhere to in order to help ensure that wireless consumers continue to receive clear, easily comprehensible telephone bills.

Respectfully submitted,

PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION

By: 

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[25] 47 U.S.C. § 258.